



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

APR 25 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Inspection No. 032803 F4026 01

Mr. Scott Pace
Manager, Registration and Marketing
Helena Chemical Company
7664 Moore Road
Memphis, Tennessee 38120

Dear Mr. Pace:

STOP SALE, USE, OR REMOVAL ORDER

Enclosed is a Stop Sale, Use, or Removal Order concerning three products: PRO-MATE DIMENSION 0.10% PLUS FERTILIZER, EPA Registration Number 5905-537, (fertilizer formulation 30-3-6); PRO-MATE DIMENSION 0.10% PLUS FERTILIZER, EPA Registration Number 5905-537, (fertilizer formulation 17-2-5); and PRO-MATE TURF FERTILIZER CONTAINS TEAM PRO .86%, EPA Registration Number 62719-289-5905 (fertilizer formulation 17-2-5).

Please notify me, in writing, within ten days of receipt of this Order, of your intentions concerning the disposition of the products covered by this Order. If you have any questions concerning this matter, you may contact Mark Leshner of my staff at (913)551-7054.

Sincerely,

M. J. Wingett
for Luetta A. Flournoy
Chief, Pesticides Branch

Enclosure: Stop Sale, Use or Removal Order
SBREFA Information Sheet

cc: Mr. Gary Meyer, Kansas Department of Agriculture

Certificate of Service

I hereby certify the original of this Stop, Sale, Use or Removal Order was sent certified mail, return receipt requested on this 25th day of April 2003, to:

Mr. Scott Pace
Manager, Registration and Marketing
Helena Chemical Company
7664 Moore Road
Memphis, Tennessee 38120

and

Mr. Mark Person
Branch Manager
Helena Chemical Company
14401 W. 100th Street
Lenexa, Kansas 66215

Vitula Lungren
Vitula Lungren

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
HELENA CHEMICAL COMPANY)	STOP SALE, USE, OR
7664 Moore Road)	REMOVAL ORDER
Memphis, Tennessee 38120)	
)	
Respondent)	
)	

I. AUTHORITIES AND BACKGROUND

1. Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA), 7 U.S.C. § 136k(a), authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that the pesticide or device is in violation of any provision of FIFRA, or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.

This authority has been delegated from the Administrator of EPA to the Regional Administrator, Region VII, and then to the Director, Water, Wetlands, and Pesticides Division, Region VII. Further delegation has been made to the Chief, Pesticides Branch.

2. On March 28, 2003, a representative of the Kansas Department of Agriculture photographed containers of three products, PRO-MATE DIMENSION 0.10% PLUS FERTILIZER, EPA Registration Number 5905-537, (fertilizer formulation 30-3-6); PRO-MATE DIMENSION 0.10% PLUS FERTILIZER, EPA Registration Number 5905-537, (fertilizer formulation 17-2-5); and PRO-MATE TURF FERTILIZER CONTAINS TEAM PRO .86%, EPA Registration Number 62719-289-5905 (fertilizer formulation 17-2-5) being held for sale or distribution at your facility in Lenexa, Kansas.

3. The products referenced in paragraph 2 were produced at Earth Watch Prescription Turf Products, Lincoln, Nebraska, which was not a registered pesticide producing establishment. The inventory of PRO-MATE DIMENSION 0.10% PLUS FERTILIZER (fertilizer formulation 17-2-5) bore labels which were obscured by fertilizer labels.

4. The products referenced in paragraphs 2 and 3 are encompassed within the term "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that they are a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating a pest.

5. The labels of the products referenced in paragraphs 2, 3, and 4 bore the designation "EPA Est. No. 5905-NC-018" whereas the products were produced at the Earth Watch facility, Lincoln, Nebraska and at the time of the inspection, the Earth Watch facility was not a registered pesticide producing establishment.

6. Pesticide products being held for sale or distribution must bear labels prominently placed with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

7. Section 2(q) of FIFRA, 7 U.S.C. § 136(u) states in part: A pesticide is misbranded if its label does not bear the registration number assigned under Section 7 to each establishment in which it was produced.

8. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it is unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

II. ORDER

9. Respondent is hereby ordered NOT to distribute, sell, use, or remove the pesticide products known as PRO-MATE DIMENSION 0.10% PLUS FERTILIZER, EPA Registration Number 5905-537, (fertilizer formulation 30-3-6); PRO-MATE DIMENSION 0.10% PLUS FERTILIZER, EPA Registration Number 5905-537, (fertilizer formulation 17-2-5); and PRO-MATE TURF FERTILIZER CONTAINS TEAM PRO .86%, EPA Registration Number 62719-289-5905 (fertilizer formulation 17-2-5), whose labels bore an incorrect EPA Establishment Number, and in the case of the inventory of PRO-MATE DIMENSION 0.10% PLUS FERTILIZER (fertilizer formulation 17-2-5) whose labels were obscured.

10. This Order shall pertain to all PRO-MATE DIMENSION 0.10% PLUS FERTILIZER, EPA Registration Number 5905-537, (fertilizer formulation 30-3-6); PRO-MATE DIMENSION 0.10% PLUS FERTILIZER, EPA Registration Number 5905-537, (fertilizer formulation 17-2-5); and PRO-MATE TURF FERTILIZER

CONTAINS TEAM PRO .86%, EPA Registration Number 62719-289-5905 (fertilizer formulation 17-2-5), products which are misbranded within the ownership, control, or custody of Respondent, wherever this pesticide is located. The pesticide shall not be sold; offered for sale; held for sale; shipped; delivered for shipment; received; or, having been so received, delivered, offered for delivery, moved, or removed from the premises, for any reason.

11. With respect to the pesticide referenced in Paragraphs 9 and 10 above, Respondent shall not commence any labeling, including, but not limited to, relabeling, or movement of the pesticide from the premises without prior written approval from EPA.
12. Violation of the terms or provisions of this Order may subject the violator to civil or criminal penalties as prescribed in Section 14 of FIFRA, 7 U.S.C. § 136j.
13. The issuance of this Order shall not act as a waiver by EPA of any enforcement or other authority available to EPA under FIFRA.
14. This Order shall be EFFECTIVE IMMEDIATELY upon receipt by Respondent.

April 24, 2003
Date

M. J. Leung
for Luetta A. Flournoy
Chief, Pesticides Branch
Water, Wetlands, and Pesticides Division